Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 2001

EPIC EDUCATIONAL PROJECTS AND INFORMATION CONSULTANT CENTER, INC.,

Petitioner,

v.

DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION,

Respondent.

On Petition for Writ of Certiorari to the Pennsylvania Superior Court

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PETITION FOR WRIT OF CERTIORARI

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November 30, 2001

62 pp

QUESTIONS PRESENTED

I. Whether irregularities during the conduct of a Sheriff Sale of real estate, in which the creditor fails to advise the Sheriff of such irregularities, and remains silent, to the detriment of the purchaser, constitute a state action which deprives purchaser of property in violation of the Due Process Clause of the Fourteenth Amendment.

II. Whether the state court's refusal to consider the U.S. Bankruptcy Court's Order and the U.S. Bankruptcy Code, in determining the proper amount due to the creditor, violates Article VI, Clause 2, of the Constitution, the Supremacy Clause, as well as Article I, Section 8, Clause 4, of the Constitution, which grants the federal government the sole power to make laws governing bankruptcy.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

The Petitioner, EPIC Educational Projects and Information Consultant Center, Inc., is a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania. It has issued no stock. It has no parent corporation, no publicly held company owning 10% or more of the corporation's stock, and no subsidiaries.

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On Petition for Writ of Certiorari to the Pennsylvania Superior Court

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EPIC Educational Projects and Information Consultant Center, Inc., respectfully petitions for a writ of certiorari to review the judgment of the Pennsylvania Superior Court in this case.

OPINIONS BELOW

The judgment and opinion of the Pennsylvania Superior Court (Appendix A, *infra*.) is unreported.

The judgment and opinion of the Court of Common Pleas of Allegheny County, Pennsylvania (Appendix B, *infra.*) is unreported.

JURISDICTION

The Pennsylvania Supreme Court denied Petitioner's Petition for Allowance of Appeal on November 8, 2001. The Pennsylvania Superior Court entered its judgment on May 9, 2001 (Appendix A, *infra.*). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment states that "nor shall any State deprive any person of life, liberty or property, without due process of law".

The U.S. Constitution, Article I, Section 8, Clause 4 states, in relevant part, that the Congress

shall have the power "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States . . ." Further, the U.S. Constitution, Article VI, Clause 2, states that the Constitution and the laws of the United States "shall be the supreme Law of the Land; and the judges in every State shall be bound thereby. . .".

STATEMENT

A. Factual Background

This case began as a quiet title action filed by Petitioner EPIC Educational Projects and Information Consultant Center, Inc., (hereinafter "EPIC"). EPIC is a non-profit corporation, licensed by the Pennsylvania Department of Education, providing educational opportunities for children, most of whom are minority and financially

disadvantaged, in grades ranging from pre-school child care through 12th grade.

EPIC purchased a parcel of real estate at a Sheriff's Sale, which property was sold pursuant to a judgment in mortgage foreclosure taken by a second mortgage holder. Several months after the sale, the first mortgage holder, Respondent Dwelling House Savings & Loan Association, (hereinafter "Dwelling House"), demanded that EPIC pay the balance due on the first mortgage. EPIC contends that Dwelling House's claim includes fees and charges that violate federal law. Further, EPIC contends that it should receive quiet title because Dwelling House, in conjunction with the Sheriff, misled EPIC at the time of sale.

On March 2, 1998, EPIC attended the Sheriff

Sale and was the successful bidder at $34,000. The sale was initiated by Household Realty Corporation, a second mortgage holder, who obtained a judgment in mortgage foreclosure against the record owner, in the amount of $20,456.79. The Dwelling House mortgage, dated February 13, 1974, is in the original principal amount of $42,000.00.

Prior to attending the Sale, EPIC investigated the status of the title to determine what liens or judgments might exist, which included reviewing the Federal Court indexes and Bankruptcy Court records. The Bankruptcy Court records indicated a consent order with the record owner, dated April 8, 1992, wherein Dwelling House amended its total claim on the mortgage's balance due to a lump sum of $34,700.05, consisting of a principal balance

claim and arrears. The Bankruptcy Court records also showed that the Trustee paid a total of $25,197.23 to Dwelling House from 1/24/92 to 9/25/95. The Bankruptcy Trustee's Final Report and Account, dated 09/28/95, indicates Dwelling House's mortgage balance due of $.00 (the Trustee's payments having been applied to pay the principal first, then the remainder towards the arrears) and Dwelling House's arrears balance due of $8,413.57. EPIC relied on those records to determine that only $8,413.57 was due.

At the Sheriff Sale, Dwelling House had its attorney present, but otherwise made no public announcement as to the amount that it claimed was due. Several months after EPIC was the successful purchaser, Dwelling House demanded payment

from EPIC in the amount of $52,178.97 in order to satisfy the first mortgage.

At the Sale, the property was number 12 out of 60 listed properties. After the initial bidding, EPIC did not have the required 10% deposit in hand, so the attorney for Household Mortgage and the Sheriff agreed to permit EPIC to go to the bank to get the additional funds. The sale was placed on hold, until the end of the list. After EPIC left the room, Dwelling House's attorney privately notified the Household Mortgage attorney and another bidder, about the Dwelling House claimed amount, but never said anything to EPIC's representative either before, during, or after the sale.

After all other properties were sold, the Sheriff re-opened the bidding on the subject

property. At that time, the only bidders were Household and EPIC. Household, who now knew of the Dwelling House claimed amount, bid up to $33,000. EPIC was the successful bidder at $34,000.

Dwelling House provided testimony that its law firm hand delivered a letter to the Sheriff prior to sale. The intent of the letter was to direct the Sheriff to announce at the time of sale, as was its custom, that the sale was subject to the Dwelling House claim of $51,429.30. While the original letter is contained in the Prothonotary's file, it does not contain the "time-stamp" indicating that it was received by the Sheriff's Office, while other papers in the file contain the Sheriff's "time-stamp".

It is undisputed that the letter was never read at the time of Sale and there was no other

announcement regarding the Dwelling House balance due, at either of the two occasions that the property was placed for bid. EPIC has attended other Sheriff Sales and observed that as each property came up for sale, prior to each sale, the Sheriff publicly announced whether the particular properties are subject to additional amounts due. EPIC relied upon this procedure and would not have purchased the property had it known that the Dwelling House claim exceeded $50,000.00.

Since the time of the Sale, EPIC has expended close to $30,000.00 to renovate the property, which had been vacant since 1995. This mortgage is also guaranteed by the Veteran's Administration to a maximum of $12,500, to cover Dwelling House for any loss it may sustain as a

result of the previous owner's default.

Prior to 1992, Dwelling House would include in the Principal Balance Due all late charges, all real estate tax payments, interest, insurance, and attorney's fees, and then charge interest on that balance. After the bankruptcy consent order of April 8, 1992, Dwelling House continued to add late charges to the Principal Balance and charge interest thereon. Dwelling House records indicate that throughout the course of the mortgage history, and specifically from 1982 through 1995, Dwelling House charged late charges, including months when timely payments were made, and further including times when lump sum payments would have cured any default and times when the payments were under the control of the U.S. Bankruptcy Trustee.

EPIC argues that the assessment of these late charges, and charging interest on those late charges, resulted in an inflated balance due and violates federal bankruptcy law.

B. Proceedings Below

On November 17 and December 2, 1999, trial was held in the lower trial court. On April 24, 2000, the Court entered a decree nisi entering judgment against EPIC. On May 3, 2000, EPIC filed its motion for post-trial relief, which was denied by final decree dated August 2, 2000. On August 24, 2000, EPIC filed its Notice of Appeal to the Pennsylvania Superior Court, which affirmed the trial court by its order of May 9, 2001. On June 8, 2001, EPIC filed its petition for Allowance of Appeal in the Pennsylvania Supreme Court. That

Court denied the Petition by Order dated November 8, 2001.

C. How the Federal Question Was Presented

The question on the irregularity of the county sheriff sale procedure was raised at the lower trial court level and continued to be raised at the appellate level. Similarly, the question of the federal bankruptcy law controlling the acts of Dwelling House was also raised at the lower court level and continued at the appellate level. Neither the trial court nor the appellate court considered the federal law issues, and instead, decided that the sheriff sale procedure and the accounting procedure were proper.

REASONS FOR GRANTING THE PETITION

I. The breakdown in the judicial sale process, which was not corrected by the creditor, creditor's law firm, or the county sheriff, despite the opportunity to speak up and correct the irregularity prior to sale, deprived the purchaser of due process of law.

The Pennsylvania Superior Court's decision holds that the rule of *caveat emptor* applies with full force at execution sales, regardless of the circumstances surrounding the sale, with the purchaser assuming all of the risks. It further holds that Dwelling House had no duty to speak at the sale, despite the usual custom at Sheriff sales to announce the balance due, and despite Dwelling House's admitted intent to do so, by virtue of its previously prepared letter to the Sheriff directing such a public announcement prior to the sale.

The general rule in Pennsylvania is that a first mortgage lien will not be divested in a sheriff's sale brought by any junior lien holder. ". . . judicial or other sale of real estate shall not affect the lien of a mortgage thereon, if the lien of the mortgage is or shall be prior to all other liens upon the same property. . ." 42 Pa.C.S.A. §8152(a). Therefore, if there are no defects in the judicial sale process, the first mortgage survives. National Penn Bank v. Shaffer, 672 A.2d 326 (Pa. Super. 1996).

A potential purchaser, however, is under no obligation to look beyond the records, and is entitled to rely upon the public records, and accept all the essential averments in the records as true. 13 Standard PA Practice 2d, §75:89. The purchaser and is not required to look beyond the public records.

13 Standard PA Practice 2d, §121:115. To the extent that the records may differ than the actual amount claimed due by a lien holder, notice of such an interest is given at the execution sale by a public declaration, which constitutes sufficient notice to the bidders. 13 Standard PA Practice 2d, §75:86. This is routinely done in Allegheny County by having the Sheriff read a letter publicly announcing the amount due on prior mortgages, on taxes, or water/sewer charges, prior to the property being placed up for bid.

EPIC was denied this sufficient notice by the absence of the public declaration. It is well settled that a sheriff's sale constitutes state action for purposes of the due process clause, and that a sheriff is a "state actor". A party may also be a state actor

if it has acted with, or has obtained significant aid from state officials, particularly when the party or lawyer requests the state to enforce or execute a state-provided procedure. Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).

Silence can be just as misleading as an overt statement, and can cause a party to rely upon the silence. Yet, the state court held that EPIC was not misled. Dwelling House had two occasions prior to each of the times the property was place up for bidding to notify the Sheriff of the failure to read the letter. EPIC was aware of the custom of the Sheriff in reading these claims, and relied upon it, as did all other bidders at the sale. The Dwelling House attorney (who is Caucasian) privately notified the other two bidders of the true amount of

its claim, one a Caucasian woman and the other a Caucasian attorney for the mortgage company, but not EPIC, a minority organization whose bidding was being done by a member of a minority race. Dwelling House saw fit to notify these two of the three bidders, but remained silent as to the third.

Meanwhile, EPIC relied on the state of the public records, and the information that can be deduced therefrom. Any prudent bidder would have relied upon the public records, and the fact that if there were any deviations from the public records, the Sheriff would have announced such deviation prior to sale, just as the Sheriff had been doing all that day. The failure to make such announcement and Dwelling House's silence, rise to such egregious conduct as to deprive EPIC of actual

notice. It is imperative that this Court grant certiorari to prevent this due process violation.

II. The Pennsylvania courts have ignored the U.S. Bankruptcy laws and prior Bankruptcy Court orders.

The state court's failure to address the issue of violation of federal bankruptcy law in the application of payments through the U.S. Trustee's office, in effect, sanctions Dwelling House's application of said payments. Pursuant to Article I, §8 of the United States Constitution, Congress has the power to establish uniform bankruptcy laws. When Congress has chosen to exercise its authority, contrary provisions of state law must accordingly give way. In re Roach, 824 F.2d 1370 (3d Cir. 1987). For the state court to ignore the April 8, 1992 Bankruptcy Court Order, to which Dwelling

House consented would permit Dwelling House to collect a debt through the state courts, which debt is illegal under federal bankruptcy law. A state court's refusal to hear a category of federal claim when the court considers state law actions is a violation of the supremacy clause. Howlettt v. Rose, 496 U.S. 356 (1990), Felder v. Casey, 487 U.S. 131 (1988).

Relevant to the instant case are several well-established maxims of bankruptcy law. Payments made during a Chapter 13 plan should be applied to the current payments due and then to the arrears amounts to cover the past due payments. In re Rathe, 114 B.R. 253 (Bankr. D. Idaho 1990). This is exactly what the Trustee did. It is also clear that Dwelling House did not. Dwelling House admitted

that it applied payments to the earliest payments due and not to the payments due and owing during the Chapter 13 pendency. It applied the payments to past late charges, attorney's fees, and interest. Although this may be appropriate for lenders if there is no bankruptcy proceeding, it is not appropriate where payments on principal and arrears are being paid under a Chapter 13 plan. Rake v. Wade, 113 S.Ct. 2187 (1993).

A lender cannot arbitrarily direct principal, interest, or arrearage payments which debtor had made to the Trustee under the chapter 13 plan without seeking Bankruptcy Court permission. Further, it cannot utilize its own accounting procedures to contravene the terms of the bankruptcy law. In re Rathe, *supra*. Dwelling

House never requested authorization to deviate from the bankruptcy court's payment terms, nor did Dwelling House object to the Trustee's final accounting. Dwelling House's actions were contrary to bankruptcy law and the court's order. Federal bankruptcy law can "eliminate vested property rights in contractual undertakings sanctioned by state law." In re Ashe, 669 F.2d 105, 111 (3d Cir. 1982). Certiorari should be granted because the state court decided a question of substance, i.e. the amount due on the mortgage, in a way that is contrary with applicable bankruptcy law, decisions of the federal appellate courts, and the Supreme Court of the United States. Even if this Court were to hold that Dwelling House's silence at the time of sale was acceptable, there nevertheless

remains the question of what is owed to Dwelling House. There is a substantial difference under Dwelling House's accounting and the accounting done by the U.S. Trustee, filed with the Bankruptcy Court, and approved by the Court without objection by Dwelling House.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:

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November 30, 2001

Appendix A:

Judgment and Opinion of Pennsylvania Superior Court

J-A08010-01

EPIC EDUCATIONAL PROJECTS AND INFORMATION CONSULTANT CENTER, INC.	:IN THE SUPERIOR : COURT OF : PENNSYLVANIA
Appellant	:
v.	:
DWELLING HOUSE SAVINGS & LOAN ASSOCIATION	: No.1430 WDA2000
Appellee	:

Appeal from the Judgment entered August 3, 2000
In the Court of Common Pleas, Civil Division
Allegheny County, No. GD 98-14038

BEFORE: ORIE MELVIN, TODD, and KELLY, JJ.

MEMORANDUM: FILED MAY 9 2001

In its action to quiet title, EPIC Educational Projects and Information Consultant Center, Inc. ("EPIC") appeals from the judgment entered in favor of Dwelling House.

Savings & Loan Association ("Dwelling House"). The trial court refused to mark as satisfied Dwelling House's mortgage lien on property which EPIC purchased at a sheriff's sale. We affirm.

The following findings of fact of the trial court provide the necessary background for our review:

> On or about February 13, 1974, Arthur G. Williams and Betty C. Williams (hereinafter "Williams") executed and delivered to [Dwelling House] a Mortgage and Note in the principal amount of $42,000.00 creating a first lien against real property with a residential home located thereon owned by Williams and known and numbered as 5044 Rosecrest Drive, Allegheny County, Pennsylvania. The Mortgage and Note were duly and properly recorded in the Allegheny County Recorder of Deeds office.
>
> On or about October 8, 1990, the Mortgage and Note became delinquent and as a result, Dwelling House initiated a Foreclosure action

July 17, 1991, at GD-9250 in the Court of Common Pleas of Allegheny County; this foreclosure action was stayed as a result of the filing of two bankruptcy petitions by Arthur G. Williams on October 4, 1991, and July 7, 1997. The second bankruptcy petition was dismissed on October 9, 1997.

In the meantime, on March 15, 1996, Household Realty Corporation (hereinafter "Household") as the holder of a second Mortgage lien recorded against the Williams' property filed its own action in mortgage foreclosure. Consequently, Household scheduled and conducted a Sheriff sale of the property on March 2, 1998.

At the time of the Sheriff sale, the balance of the mortgage in favor of Dwelling House was 51,429.13.

[EPIC] was the high bidder at the Sheriff sale and purchased the Williams' property for the sum of $34,000.00 subject to the lien of Dwelling House.

Subsequently to the sale, however, on September 2, 1998,[EPIC] filed a Complaint to Quiet Title against Dwelling House seeking

> a judicial determination that the Mortgage of Dwelling House should be satisfied of record. This case proceeded to trial before the court as Chancellor and was concluded on December 8, 1999.

(Trial Court Adjudication and Decree Nisi, 4/24/00, at 1-2.)

The court by decree nisi dated April 24, 2000, found that EPIC had failed to sustain its burden of showing that the mortgage should be divested, and entered judgment in favor of Dwelling House. On EPIC's motion, the trial court enjoined to the March 8, 1998 Sheriff's sale. EPIC's post-trial motions were then denied and this timely appeal followed.

Our standard of review with respect to the action of a chancellor in equity is limited. ***Thermo-Guard, Inc. v. Cochran,*** 596 A.2d 188, 193 (Pa. Super. 1991). We will reverse only where the trial

court was "Palpably erroneous, misapplied the law or committed a manifest abuse of discretion." *Id.* Where there are any apparently reasonable grounds for the trial court's decision, we must affirm it. *Id.*

On appeal, EPIC first argues that the trial court erred in not considering Dwelling House's failure to publicly announce at the Sheriff's sale the total amount of its mortgage lien on the property. This failure, EPIC asserts, resulted in its purchasing a property with a larger lien than it had anticipated.

Although the record reveals that Dwelling House sent a letter to the Sheriff's office identifying Dwelling House's claim on the property and asking that it be announced, it appears no such announcement was made . EPIC nonetheless argues

that Dwelling House had a duty to inform potential purchasers of the full amount of its claim. EPIC cites as particularly egregious evidence that Dwelling House's attorney was present at the sale and yet made no attempt to a delay in the bidding process.

Numerous decisions of the courts of this Commonwealth make clear that the rule of caveat emptor applies with full force at execution sales. ***Taylor v. Bailey,*** 323 pa. 278, 284, 185 A. 699, 702 (1936); **CSS Corp. v.** ***Sheriff of Chester County,*** 507 A.2d 870, 872 (Pa. Super. 1986); ***National Penn Bank v. Shaffer,*** 672 A.2d 326, 330 (Pa. Super. 1996). Neither the seller, nor the Sheriff, has any duty to inform potential purchasers of the exact

state of the title. ***Taylor,*** 323 Pa. At 284, 185 A. at 702. The purchaser assumes all the risks:

> A Sheriff's Sale is made without warranty; the purchaser takes all the risk, and the rule of caveat emptor applies in all its force. The purchaser at such a sale receives all the right, title, and interest in the property that the judgment debtor held and the rights of the purchaser become fixed when the property is knocked down to the highest bidder. If the debtor has no rights in the property at the time of the sheriff's sale, however, no title passes to the purchaser.

Juniata Valley Bank v. Martin Oil Co., 736 A.2d 650, 660 (Pa. Super.1999) (quoting **CSS,** 507 A.2d at 872). Further, we have cautioned:

> Bidders, therefore, must look out and take care of themselves. It is their business to examine beforehand, and after having made themselves acquainted

> acquainted with the facts and circumstances in relation to encumbrances, if any exist, then to decide for themselves as to what will be the legal effect and operation of the dale upon them.

Nat'l Penn Bank, 672 A.2d at 330 (quoting ***Taylor v. Bailey***, Supra).

Therefore, EPIC's assertion that Dwelling House was obliged to take any action at the sale must be rejected. Further, EPIC does not make any claim of fraud or misrepresentation which might warrant a different conclusion. ***See*** 13 Standard Pennsylvania Practice 2d § 75:51. Rather, Dwelling House was silent in a situation where we hold it had no duty to speak.

Finally, ***First National Bank of Koppel v. Mount,*** 1 a.2d 547 (Pa.Super. 1938) (en banc) – the only case which EPIC cites in support of its argument– does not advance EPIC's position. In that case, this Court found no abuse of discretion in the trial court's setting aside a sheriff's sale where the purchaser's excessive bid was the result of confusion caused by the creditor. ***Id.*** at 549-50. Here, by contrast, Dwelling House did nothing to cause confusion and, in fact, took no action at all.

EPIC next argues that the trial court erred in permitting Dwelling House to add counsel fees to the amount due on the loan, and therefore the

amount which EPIC must pay to clear the title.[1] EPIC's argument is that it is not bound by the terms of the mortgage, and even if it is, the mortgage does not provide for counsel fees under these circumstances.

---

[1] As we noted, on EPIC's motion, the court did enjoin Dwelling House from charging EPIC any interest or late fees retroactive to the sheriff's sale. That order reads in full:

> AND NOW, to wit, this 31st day of July, 2000, upon consideration of Plaintiff's Motion to Stay the Accrual of Interest and Late Fees, it is hereby ORDERED, that Plaintiff's Motion is granted, and that Defendant Dwelling House Savings & Loan Association shall be prohibited from charging to plaintiff any interest and late fees retroactive to the March 2, 1998 Sheriff's Sale. This order does not alter any of Defendant's rights to continue to charge interest and late fees on the mortgage and note to the original mortgagees on the Mortgage and Note.

(Trial Court Order, 7/31/00)

While EPIC is not personally liable for the debt owed by the Williams to Dwelling House, the property itself remains subject to the mortgage despite the sheriff sale:

> A mortgage, although in form a conveyance of title, is only security for the payment of money or the performance of another collateral contract. When the property which is subject to the mortgage is transferred without payment of the mortgage, the property in the hands of the transferee continues to be security for the performance of the obligation, and for any default the mortgagee may seize and sell the property in the hands of the transferee. The contractual relationship between mortgagee and transferee continues by operation of law.

Mancine v. Concord-Liberty Sav. & Loan Ass'n, 445 A 2.d 744, 748 (pa.Super. 1982); 42 pa.C.S.A. § 8152. To satisfy the debt owed, Dwelling House could proceed in rem against the property, or in

personam against the former owners. ***See Bank of Pennsylvania v. G/N Enter., Inc.***, 463 A.2d 4, 6 (Pa. Super. 1983) ("The holder of a bond and mortgage can proceed in rem or in personam to enforce his claim"). Thus, the property remains subject to the mortgage and Dwelling House may foreclose on the property to satisfy the debt owed by the Williams, including any fees provided for by the mortgage contract. ***See Kaib v. Smith***, 684 A.2d 630, 632 (Pa. Super. 1996) ("The purpose of a sheriff's sale in mortgage foreclosure proceedings is to realize out of the land, the debt, interest, and costs which are due, or have accrued to, the judgment creditor.")

Paragraph 14 of the mortgage provides for the assessment of counsel fees where the mortgagor is in

default. (Mortgage, 2/13/7.) This is indisputably the case here. Thus counsel fees are one element of the total obligation owed by the Williams and, more importantly for EPIC, realizable from the property which EPIC now owns.[2]

EPIC finally argues that Dwelling House "is attempting to collect a balance due that is the result of erroneous bookkeeping practices and impermissible charges to the loan while the original owner was in bankruptcy and making payments to the U.S. Bankruptcy Trustee." (EPIC Brief at 4.)

---

[2] The trial court limited these fees to 5% of the principal balance:

In an action to quiet title, the burden of proof is on the plaintiff. ***Castronuovo v. Sordoni,*** 515A.2d 927 (Pa. Super. 1986). The plaintiff "can recover only on the strength of [its] title and not upon the weakness" of the defendant's. ***Id.*** The trial court ruled that EPIC "has failed to sustain its burden of proving that the amounts claimed by

---

> The only questionable item is the amount of attorney's fees charged which, according to the mortgage, should amount to no more than five percent (5%) of the principal balance.
>
> Therefore, Defendant Dwelling House shall submit to the court for approval a final amount due under the mortgage with attorney fees calculated at no more than five percent (5%) of the principal balance.

(Trial Court Adjudication and Decree Nisi, 4/24/00, at 4.)

Dwelling House are incorrect". (Trial Court Adjudication and Decree Nisi, 4/24/00, at 4), and we agree.

At trial, EPIC presented the testimony of two witnesses, EPIC's president and founder who testified primarily to the circumstances surrounding the sale, and an accountant who had reviewed Dwelling House's financial records on the subject property and was EPIC's only expert on the issue of the alleged improper bookkeeping. The accountant's testimony was highly equivocal, stating as he did at various times that he would be "speculating," that he was "unsure," and that he "can't really say." Indeed, during a discussion with

the court over the scope of his testimony, he stated:

> If I might make a statement? I think as to the proper determination of the records of the institution, we may need an expert as to some of the savings and loan procedures from a regulator or federal examiner. You may need someone like that to come in and testify to the fact as to whether some of these procedures should be performed or not.

(N.T., 11/17/99, at 25.) Much of the trial consisted of the defense's case – in particular, the direct and cross examination of Dwelling House's president who attempted to justify the amounts which it claims are owed.

Given this record, and given EPIC's burden in this action, we cannot conclude that the trial court abused its discretion in ruling against EPIC.

Judgment affirmed.

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

Date: MAY 9 2001

Appendix B:

Judgment and Opinion of Allegheny County Common Pleas Court

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

EPIC EDUCATIONAL PROJECTS AND INFORMATION CONSULTANT CENTER, INC.,	:	CIVIL DIVISION
	:	GD 98-14038
	:	EQUITY
Plaintiff,	:	
vs.	:	
DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION	:	
Defendant.	:	

ORDER OF COURT

AND NOW, to-wit, this 2nd day of Aug., 2000, it is hereby ORDERED that Plaintiff's Post-Trial Motions be and are hereby Denied and the Decree Nisi dated April 24, 2000, is hereby made Final.

The Prothonotary is directed to give notice of the entry of this Final Decree to counsel of record for Plaintiff and Defendant.

BY THE COURT:

James H. Mclean, Chancellor

IN THE COURT OF COMMON PLEAS OF
ALLEGHENYCOUNTY, PENNSYLVANIA

EPIC EDUCATIONAL AND INFORMATION CONSULTANT CENTER, INC.,	: CIVIL DIVISION : : GD 98-14038 : :
Plaintiff,	: EQUITY :
vs.	:
DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION,	: : : :
Defendant.	:

FACTS

On or about February 13, 1974, Arthur G. Williams and Betty C. Williams (hereinafter "Williams") executed and delivered to Dwelling House Savings and Loan (hereinafter "Dwelling House") a Mortgage and Note in the principal amount

of $42,000.00 creating a first lien against real property with a residential home located thereon owned by Williams and knows and numbered as 5044 Rosecrest Drive, Allegheny County, Pennsylvania. The Mortgage and Note were duly and properly recorded in the Allegheny County Recorder of Deeds office.

On or about October 8, 1990, the Mortgage and Note became delinquent, and, as a result, Dwelling House initiated a Foreclosure action on July 17, 1991, at GD-9250 in the Court of Common Pleas of Allegheny County; this foreclosure action was stayed as a result of the filing of two bankruptcy petitions by Arthur G. Williams

on October 4, 1991, and July 7, 1997. The second bankruptcy petition was dismissed on October 9, 1997.

In the meantime, on March 15, 1996, Household Realty Corporation (hereinafter "Household") as the holder of a second Mortgage lien recorded against the Williams' property filed its own action in mortgage foreclosure.

Consequently, Household scheduled and conducted a Sheriff sale of the property on March 2, 1998.

At the time of the Sheriff sale, the balance of the mortgage in favor of Dwelling House was 51,429.13. Epic Educational Projects and Information

Consultant Center, Inc. (hereinafter Epic) was the high bidder at the Sheriff sale and purchased the Williams' property for the sum of $34,000.00 subject to the lien of Dwelling House.

Subsequently to the sale, however, on September 2, 1998, Epic filed a Complaint to Quiet Title against Dwelling House seeking a judicial determination that the Mortgage of Dwelling House should be satisfied of record. This case proceeded to trial before the court as Chancellor and was concluded on December 8, 1999. Epic and Dwelling House have submitted Proposed Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

...[A] judicial or other sale of real estate shall not affect the lien of mortgage thereon, if the lien of the mortgage is or shall be prior to all other liens upon the same property...42Pa.C.S.§ 8152 (a)

Upon petition of any party in interest before delivery of the ...sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances. Pa..R.C. P.3132.

The method for challenging a completed sheriff's sale is for the aggrieved party to file a petition to set aside the sale

Farmers First Bank v. Wager, 455 Pa. Super. 107,687 A.2d 390 (1997).

The successful bidder at a sheriff's sale "shall pay the full amount of his bid at the time of sale, and upon his failure to do so, the Sheriff shall thereupon at that time resell the real estate;...any monies paid at the...sale shall be applied by the sheriff to any deficiency in the price at which the real estate resold;...Allegheny County Local Rules of Court 3129.

DISCUSSION

Clearly, the mortgage lien of Dwelling House was not divested as result of the Sheriff's sale on March 2, 1998; nor does the court have the power under the

circumstances here presented to divest the otherwise properly recorded mortgage. Thus, Epic purchased the Williams' property subject to the first mortgage lien of Dwelling House.

Epic could have availed itself of the opportunities to release itself from the obligation to complete its purchase of the Williams' property after Epic discovered the lien of the first mortgage held by Dwelling House by proceeding pursuant to Pa.R.C.P.§3132 or by forfeiting its deposit paid subsequent to the sale pursuant to 42 Pa.C.S.§3129 of the local rules of court.

Epic is charged with the knowledge of the existence of the mortgage lien of

Dwelling House, 16 Pa.C.S. §9853, and the failure of Epic to have properly researched the amount of the mortgage are insufficient to support a claim that the mortgage should be divested.

The only matter left to be resolved is the amount of the mortgage. Epic has failed to sustain its burden of proving that the amounts claimed by Dwelling House are incorrect. The only questionable item is the amount of attorney's fees charged which, according to the mortgage, should amount to no more than five percent (5%) of the principal balance.

Therefore, Defendant Dwelling House shall submit to the court for approval a final

amount due under the mortgage with attorney fees calculated at no more than five percent (5%) of the principal balance.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY,
PENNSYLVANIA

EPIC EDUCATIONAL PROJECT AND INFORMATION CONSULTANT CENTER, INC.,	:CIVIL DIVISION : :GD 98-14038 : : : EQUITY
Plaintiff,	: :
vs.	: :
DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION,	: : : :
Defendant.	:

DECREE NISI

AND NOW, to-wit, this 4-17 day of April, 2000, it is hereby ORDERED that Plaintiff has failed to sustain its burden that the mortgage of Dwelling House Savings and Loan should be divested as a result of the

Sheriff's sale on March 2, 1998. Judgment is entered on behalf of Defendant against Plaintiff.

Defendant shall submit for approval a final amount under the mortgage with attorney's fees calculated at no more than five percent (5%) of the principal balance.

The Prothonotary is directed to give notice of the entry of this Decree Nisi to counsel of record for Plaintiff and Defendant and, unless a motion for post-trial relief is filed within ten (10) days, to enter this Decree Nisi as a Final Decree upon praecipe duly filed.

BY THE COURT:

James H. Mclean, Chancellor

Appendix C:

ORDER OF SUPREME COURT OF PENNSYLVANIA

IN THE SUPREME COURT OF PENNYSLYVANIA
WESTERN DISTRICT

EPIC EDUCATIONAL PROJECTS AND INFORMATION CONSULTANT CENTER, INC.,	: No. 323 WAL 2001 : : Petition for Allowance : from the Order of the : Superior Court
Petitioner	:
v.	:
DWELLING HOUSE SAVINGS AND LOAN ASSOCIATION	:
Respondent	:

ORDER

PER CURIAM

AND NOW, this 8th day of November, 2001, the Petition for Allowance of Appeal is DENIED.

A True Copy Patricia Honard
As of November 8, 2001
Attest: Patricia Honard
Chief Clerk
Supreme Court of Pennsylvania